

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

LEAH KEELEY)
Plaintiff,)
v.)
FIRST STUDENT, INC.,) CIVIL ACTION NO.
Defendant.)

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, on this date, Defendant First Student, Inc. (“Defendant”) has filed this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446, in the office of the Clerk of the United States District Court for the District of Massachusetts. Removal is proper for the following reasons:

1. First Student, Inc. is the Defendant in a civil action pending in the Superior Court of the Commonwealth of Massachusetts, Hampden County, titled *Leah Kelley v. First Student, Inc.* (the “Pending Action”). The Pending Action was commenced on or about February 5, 2019 and is designated as Docket No. 19-087.
2. Defendant, an out of state corporation, received service of the Summons and Complaint by certified mail delivery after its date of filing, March 7, 2019.¹ Therefore, this Notice of Removal is timely because it is done within 30 days of proper service of the Summons

¹ A purported proof of service of process on March 6, 2019, by Deputy Sheriff Joseph P. Casey of the Suffolk County Sheriff’s Department (“Sheriff”) was included with the package received by Defendant. However, the Sheriff’s purported service of process is ineffective, as the Sheriff attempted service at Corporation Service Company at 84 State Street, Boston, MA, which is **not** the Defendant’s registered agent. *See Massachusetts Secretary of State, Business Entity ID Number 592364035 for First Transit, Inc.* (registered agent CT Corporation System, 155 Federal St., Suite 700, Boston, MA 02110). In any event, removal is timely as of April 5, 2019.

& Complaint. Attached hereto as Exhibit A is a true and correct copy of all process and pleadings served on Defendant in the Pending Action.

3. This Court has original jurisdiction over the Pending Action pursuant to 28 U.S.C. § 1331 in that Plaintiff alleges, *inter alia*, violation of a federal statute, the Family and Medical Leave Act, 29 U.S.C. § 2615 (“FMLA”). A federal question therefore exists in this matter.²

4. Thus, this action is removable to this Court pursuant to 28 U.S.C. § 1441(a) in that the district courts of the United States have original jurisdiction over claims under the FMLA.

5. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be given promptly to Plaintiff’s counsel. A copy of this Notice of Removal attached to the Notice of Filing Notice of Removal, attached hereto as Exhibit B, will also be filed promptly with the Clerk of the Superior Court Department of the Trial Court for the Commonwealth of Massachusetts, Hampden County.

6. By filing this Notice, Defendant does not waive their rights to object to service of process, the sufficiency of process, jurisdiction over the person, or venue, and specifically reserves the right to assert any defense, denial, and/or objection to which it may be entitled.

² This matter is likely also removable pursuant to 28 U.S.C. §§ 1332 and 1441(b) based on diversity of citizenship, as Plaintiff is a citizen of Massachusetts and Defendant is a citizen of Ohio, and the amount in controversy likely exceeds \$75,000 under the claims asserted. Compl. ¶¶ 1, 2. Defendant reserves its right to assert jurisdiction based on diversity of citizenship upon and at any time following confirmation of the amount in controversy.

Respectfully submitted,

FIRST STUDENT, INC.

By its attorneys,

/s/ Siobhan M. Sweeney

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April 5, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2019, a true and accurate copy of the foregoing pleading, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants. In addition, a PDF copy of the foregoing will be forwarded counsel for Plaintiff by email, follows:

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Springfield, MA 01103

/s/ Siobhan M. Sweeney

Siobhan M. Sweeney